

IN THE CIRCUIT COURT OF HAMILTON COUNTY, TENNESSEE

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|--------------------------------|---|-------------|
| CHARLESETTA WOODARD |) | |
| THOMPSON, |) | |
| |) | |
| Plaintiff, |) | |
| |) | NO. 13C979 |
| v. |) | |
| |) | DIVISION IV |
| CHATTANOOGA-HAMILTON |) | |
| COUNTY HOSPITAL AUTHORITY, |) | JURY DEMAND |
| d/b/a/ ERLANGER HEALTH SYSTEM, |) | |
| |) | |
| Defendant. |) | |

ANSWER

Defendant Chattanooga-Hamilton County Hospital Authority, doing business as Erlanger Health System (“Erlanger”), by and through counsel, hereby submits the following in answer to the Complaint filed against it herein.

INTRODUCTION

In the Complaint, Plaintiff Charlesetta Woodard Thompson (“Plaintiff”) alleges that she was discharged because of an unidentified disability or because she refused to participate in/remain silent about an unidentified illegal activity. She also alleges that Erlanger invaded her privacy or engaged in a conspiracy by accessing/deleting unidentified files or e-mails. While plaintiffs are generally free to allege anything they wish to allege in their complaints, the instant allegations are simply not true.

When Plaintiff agreed to assume the Interim CEO position effective December 1, 2011, she did so knowing full well that the position would exist only until a permanent CEO was identified and only after representing that she was not interested in the permanent position. Erlanger’s subsequent search for a permanent CEO was led by a highly-respected, national

executive search firm. A number of very qualified candidates from across the country were interviewed. After Plaintiff suddenly announced, contrary to her prior representation, that she was interested in the position, she, too, was interviewed. Plaintiff was not, however, selected as one of the three finalists for the position. Her time as Interim CEO had not been a success, as multi-million dollar deficits continued to plague Erlanger's operations.

In February of 2013, Erlanger's Board of Trustees, consisting of men and women who were appointed by elected public officials and who serve without pay, selected a board-certified healthcare executive, Kevin M. Spiegel, Fellow of the American College of Healthcare Executives ("FACHE"), to be Erlanger's new President and CEO. Mr. Spiegel's qualifications for the position were/are considered impeccable and unmatched by any of the candidates considered, including Plaintiff.

With Mr. Spiegel's arrival on April 1, 2013, Plaintiff's interim position ended on March 31. In advance of that date, however, Erlanger discussed with Plaintiff opportunities in which she could remain employed at Erlanger. Although her former position had been eliminated in an earlier management restructure (over which Plaintiff had, herself, presided as Interim CEO), Erlanger wanted her to stay. In response, however, Plaintiff made it clear that she was not interested in working under/with the new administration.

At Plaintiff's request, Erlanger did, however, agree to postpone her termination date by allowing her to take a fully-paid leave of absence for up to 12 weeks. That leave began during that last week of March and expired on June 23, 2013. Thereafter, Erlanger offered Plaintiff, without any obligation to do so, a very generous severance package. It was she who rejected that offer.

Neither Plaintiff's "medical condition" (nor any other protected activity in which she allegedly engaged) had anything to do with the termination of her employment at Erlanger. Upon investigation (including reliance on the findings of an independent computer forensics firm), none of Plaintiff's other allegations of "strange and alarming happenings" were found to be supported by the facts. To Erlanger's knowledge, Plaintiff's personal safety has never been in jeopardy; Plaintiff's files or e-mails were never improperly accessed/deleted; and Plaintiff was never the victim of any unlawful conspiracy. Again, allegations to the contrary are simply not true.

FIRST DEFENSE

Plaintiff's claims are barred, in whole or in part, by her failure to state a cause of action or claim against Erlanger upon which relief may be granted.

SECOND DEFENSE

In response to the numbered allegations of the Complaint, Erlanger states:

1. The allegations of Paragraph 1 are admitted.
2. The allegations of Paragraph 2 are admitted.
3. It is admitted and/or averred that Erlanger is an employer covered by the Tennessee Disability Act, Tennessee Code Annotated § 38-50-103 and the Tennessee Public Protection Act, Tennessee Code Annotated § 50-1-304. To the extent inconsistent with the aforesaid admission and averment, the remaining allegations of Paragraph 3 are denied.
4. It is admitted that this Court has jurisdiction over this action. The remaining allegations of Paragraph 4 do not warrant a response from Erlanger. Said allegations attempt only to characterize the nature of Plaintiff's action. Any inference within those allegations suggesting that Erlanger is liable to Plaintiff is, however, specifically denied.

5. It is admitted that venue is proper in Hamilton County, Tennessee, and that Erlanger is an employer in Hamilton County, Tennessee. The remaining allegations of Paragraph 5 do not warrant a response from Erlanger. Said allegations attempt only to characterize the nature of Plaintiff's action. Any inference within those allegations suggesting that Erlanger is liable to Plaintiff is, however, specifically denied.

6. The allegations of Paragraph 6 do not warrant a response from Erlanger. Said allegations attempt only to characterize the nature of Plaintiff's action. Any inference within those allegations suggesting that Erlanger is liable to Plaintiff is, however, specifically denied.

7. The allegations of Paragraph 7 are admitted upon information and belief.

8. It is admitted and/or averred that Plaintiff was hired by Erlanger as a department director in 1992, became Senior Vice President of Human Resources in 1999, and assumed the title of Chief of Human Resources in 2002. It is further admitted that upon the resignation of then-CEO Dennis Pettigrew in February 2003, Plaintiff agreed to serve as interim CEO until such time as a permanent CEO could be identified. Those persons expressing an interest in the interim CEO position, including Plaintiff, confirmed that they were not interested in consideration for the permanent CEO position. To the extent inconsistent with the aforesaid admissions and averments, the remaining allegations of Paragraph 8 are denied.

9. It is admitted that Plaintiff served as interim CEO from February 2003 until March 2004. It is further admitted that Jim Brexler was hired as the permanent CEO in 2004. It is further admitted and/or averred that in October of 2004, Plaintiff became Executive Vice President and Chief Operating Officer ("COO"), the first non-Caucasian female to hold that title. It is further averred that COO responsibilities were removed from Plaintiff's duties in 2010. To

the extent inconsistent with the aforesaid admissions and averments, the remaining allegations of Paragraph 9 are denied.

10. It is admitted and/or averred that Jim Brexler resigned in December 2011. It is further admitted that Plaintiff agreed to serve as interim CEO until such time as a permanent CEO could be identified. Again, prior to accepting the interim position, Plaintiff confirmed that she was not interested in consideration for the permanent position. Upon assuming the interim position, Plaintiff's salary was increased, without obligation, by over 35%, from \$358,898.50 to \$486,720 per year. It is further admitted and/or averred that Mr. Brexler was provided with a severance package pursuant to his previously-executed employment agreement. It is further admitted and/or averred that for the 2012 fiscal year, Erlanger suffered a deficit of \$9.5 million from operations. To the extent inconsistent with the aforesaid admissions and averments, the remaining allegations of Paragraph 10 are denied, including, without limitation, any suggestion that Plaintiff's second tenure as Interim CEO was a "success." It was not.

11. It is admitted and/or averred that several Erlanger officials (and some of their family members), including Plaintiff, visited a shooting range, although the event was neither strange nor startling. To the extent inconsistent with the aforesaid admission and averment, the remaining allegations of Paragraph 11 are denied.

12. It is admitted and/or averred that Plaintiff expressed, at one point in time, a concern about the security of her emails. In response, Erlanger initiated an investigation, employing a highly-respected, independent computer forensics firm. The forensics firm found absolutely no evidence that Plaintiff's email had been invaded, meddled with, or otherwise compromised. To the extent inconsistent with the aforesaid admissions and averments, the remaining allegations of Paragraph 12 are denied.

13. The allegations of Paragraph 13 are denied.

14. The allegations of Paragraph 14 are denied.

15. The allegations of Paragraph 15 are denied.

16. It is admitted and/or averred that Erlanger's Chief Legal Officer announced his resignation in March 2013. To the extent inconsistent with the aforesaid admission and averment, the remaining allegations of Paragraph 16 are denied.

17. The allegations of Paragraph 17 are admitted.

18. The allegations of Paragraph 18 are admitted.

19. It is admitted and/or averred that on November 21, 2012, after conducting an extensive search for the most qualified candidates with the assistance of a highly-respected, national executive search firm and after the search committee interviewed a number of those candidates, including Plaintiff, a member of the executive search firm advised Plaintiff that she had not been selected as one of the three finalists being considered for the permanent CEO position. To the extent inconsistent with the aforesaid admission and averment, the remaining allegations of Paragraph 19 are denied.

20. It is admitted and/or averred that in December 2012, after Plaintiff was advised that she had not been selected as one of three finalists being considered for the permanent CEO position, Erlanger's Board of Trustees held an open forum to receive comments from physicians and other members of the community. To the extent inconsistent with the aforesaid admission and averment, the remaining allegations of Paragraph 20 are denied.

21. It is admitted and/or averred that in December 2012, after conducting an extensive search for the most qualified candidates with the assistance of a highly-respected, national executive search firm and after the search committee interviewed a number of those candidates,

including Plaintiff, the search committee identified three finalists for the permanent CEO position. It is further admitted and/or averred that following the identification of the three finalists, each candidate was introduced to and interviewed by Erlanger's Board of Trustees prior to its selection of the permanent CEO. To the extent inconsistent with the aforesaid admissions and averments, the remaining allegations of Paragraph 21 are denied.

22. It is admitted and/or averred that in December 2012, an individual employed by the Urban League, an entity upon which Plaintiff serves as Board Chair, commented in support of Plaintiff. To the extent inconsistent with the aforesaid admission and averment, the remaining allegations of Paragraph 22 are denied.

23. It is admitted and/or averred that in December 2012, an employee working under Plaintiff and a physician commented in support of Plaintiff. To the extent inconsistent with the aforesaid admission and averment, the remaining allegations of Paragraph 23 are denied.

24. It is admitted and/or averred that in February 2013, Erlanger's Board of Trustees announced its decision to hire Kevin M. Spiegel, FACHE, as the permanent CEO. It is further admitted and/or averred that the terms of Mr. Spiegel's employment are memorialized in a written contract, effective April 1, 2013. To the extent inconsistent with the aforesaid admissions and averments, the remaining allegations of Paragraph 24 are denied.

25. The allegations of Paragraph 25 are denied.

26. The allegations of Paragraph 26 are denied.

27. It is admitted and/or averred that prior to the end of Plaintiff's interim position, Plaintiff was offered the opportunity to delay her March 31, 2013 termination date by taking a fully-paid leave of absence for up to 12 weeks. Although Plaintiff was also offered the opportunity to remain at Erlanger, she rejected that offer, stating that she would not work

under/with the new administration. To the extent inconsistent with the aforesaid admissions and or averments, the remaining allegations of Paragraph 27 are denied.

28. It is admitted and/or averred that prior to the end of Plaintiff's interim position, Plaintiff was offered the opportunity to delay her March 31, 2013 termination date by taking a fully-paid leave of absence for up to 12 weeks. Although Plaintiff was also offered the opportunity to remain at Erlanger, she rejected that offer, stating that she would not work under/with the new administration. To the extent inconsistent with the aforesaid admissions and averments, the remaining allegations of Paragraph 28 are denied.

29. It is admitted and/or averred that by letter dated June 26, 2013, Erlanger's Chief Administrative Officer reminded Plaintiff that with Mr. Spiegel's appointment to the permanent CEO position on April 1, 2013, her interim position had ended; that her former position had been eliminated in the prior year's restructure (over which Plaintiff had, herself, presided); that although alternative assignments had been discussed with her, she had made it clear that she was not interested in working under the current administration; that while Erlanger had agreed to postpone her termination date by allowing her to take a fully-paid leave of absence for up to 12 weeks, that leave had expired on June 23, 2013; and that with the expiration of her leave of absence, her official termination date would be June 23, 2013. Plaintiff was well aware that her 12-week leave of absence would expire on June 23, 2013. To the extent inconsistent with the aforesaid admissions and averments, the remaining allegations of Paragraph 29 are denied.

30. It is admitted and/or averred that in the letter dated June 26, 2013 letter, Plaintiff was reminded that her "former position with Erlanger had been eliminated in last year's restructure," – a restructure which was overseen by Plaintiff in her interim position. Plaintiff's former position, Executive Vice President, was eliminated in that restructure. It is further

admitted and/or averred that Erlanger had previously posted the position of COO and that COO responsibilities had been removed from Plaintiff's duties in 2010. To the extent inconsistent with the aforesaid admissions and averments, the remaining allegations of Paragraph 30 are denied.

31. The allegations of Paragraph 31 are denied.

32. In response to the allegations of Paragraph 32, Erlanger adopts and incorporates its answers to Paragraphs 1 through 31 of the Complaint as if set forth herein.

33. The allegations of Paragraph 33 are denied.

34. The allegations of Paragraph 34 are denied.

35. Without reference to a specific position, Erlanger is without sufficient facts to assess the accuracy of the allegation regarding Plaintiff's qualification. The remaining allegations of Paragraph 35 are, however, denied. In fact, following the termination of Plaintiff's interim CEO position, Plaintiff was offered the opportunity to remain at Erlanger, but she rejected that opportunity, stating that she would not work under/with the new administration.

36. The allegations of Paragraph 36 are denied.

37. The allegations of Paragraph 37 are denied.

38. The allegations of Paragraph 38 are denied.

39. The allegations of Paragraph 39 are denied.

40. The allegations of Paragraph 40 are denied.

41. The allegations of Paragraph 41 are denied.

42. The allegations of Paragraph 42 are again denied. Said allegations were previously made (and denied) in Paragraph 40 of the Complaint.

43. Any and all allegations of the Complaint, including its prayer for relief (subparagraphs a - f), not otherwise admitted above, are denied.

THIRD DEFENSE

Plaintiff's claims of invasion of privacy and conspiracy are barred under the Tennessee Governmental Liability Act, Tennessee Code Annotated § 29-20-101 et seq., and such claims should, therefore, be dismissed.

FOURTH DEFENSE

Plaintiff is not entitled to the recovery of punitive damages under the Tennessee Governmental Tort Liability Act, Tennessee Code Annotated § 29-20-101 et seq.; the Tennessee Disability Act, Tennessee Code Annotated § 8-50-103; and the Tennessee Public Protection Act, Tennessee Code Annotated § 50-1-304; and the demand for such damages should, therefore, be struck.

FIFTH DEFENSE

Plaintiff's claims are barred, in whole or in part, by her failure to mitigate her damages, if any.

SIXTH DEFENSE

Plaintiff is not entitled to a jury trial under the Tennessee Governmental Tort Liability Act, Tennessee Code Annotated § 29-20-101 et seq., and the demand for a trial by jury should, therefore, be struck.

SEVENTH DEFENSE

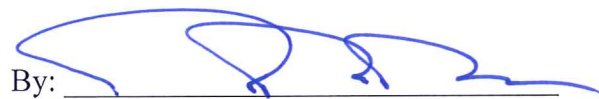
Erlanger is presently without information as to the availability and applicability of any other affirmative defenses in addition to those pled above and expressly reserves the right to

amend this Answer to plead any other affirmative defense or matter of avoidance as required by the Tennessee Rules of Civil Procedure which may be revealed as discovery progresses.

WHEREFORE, Erlanger requests that the Complaint be dismissed, with costs, attorney fees and such other and further relief as this Court deems appropriate issued in its favor.

Respectfully submitted,

MILLER & MARTIN PLLC

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that an exact copy of this pleading has been served upon counsel for all parties in this action, or upon said parties themselves as required by law, by delivering a copy thereof, or by depositing a copy of the same in the United States Mail, with sufficient postage affixed thereto to ensure delivery to the following:

Jennifer H. Lawrence, Esq.
Lawrence & Lawrence, PLLC
P.O. Box 1297
Chattanooga, TN 37401

This 3RD day of September, 2013.

By: _____

